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September 19, 2022

Forsyth County Board of Voter Registrations & Elections
1201 Sawnee Drive
Cumming, Georgia 30040

Via E-mail and Publication

**Re: Reinstating Voters Removed or Flagged at September 6, 2022
Challenge Hearing**

Dear Forsyth County Board of Voter Registrations & Elections,

The ACLU of Georgia writes in response to your recent decision to sustain 301 voter challenges at the September 6, 2022 hearing (“the hearing”). That decision was made in violation of state and federal law and we urge you to reverse it. The sustained challenges were illegal because: (1) the Board failed to follow protections mandated by federal law, which include the prohibition against systematic voter removals within 90 days of a federal election; (2) the hearing did not meet state-law standards; and (3) removing voters in such a hasty manner violated basic notions of fairness and due process. **Accordingly, we advise you to immediately reverse your decision to remove or flag 301 Forsyth voters.**

First, multiple provisions of federal law prohibit the type of voter removals that the Board sustained at the hearing. Any systematic¹ removal of voters within 90 days of a federal election violates the National Voter Registration Act (“NVRA”).² On the date of the hearing, only 63 days remained until Election Day. On May 12, 2022, by contrast, this Board rejected a similar voter challenge, correctly citing the proximity of the primary election (taking place 12 days later) as one of the many

¹ The Eleventh Circuit has held that a removal is “systematic” if it does “not rely upon individualized information or investigation to determine which names from the voter registry to remove.” *Arcia v. Florida Sec’y of State*, 772 F.3d 1335 (11th Cir. 2014). The Court noted that a “[m]ass computerized data-matching process to compare the voter rolls with other state and federal databases, followed by the mailing of notices” qualified as a “systematic” removal under federal law. *Id.* at 1344.

² See 52 U.S.C. § 20507(c)(2)(A).

reasons why that challenge could not be sustained.³ The same limitation applies here, and the Board must follow the law as it did in May. Additionally, the Board removed certain voters in violation of the NVRA’s requirement that specific conditions be met before removing a voter due to a change in residence.⁴ None of the requisite conditions had been met, yet the Board moved forward with the removals.

Second, the Board disregarded many of the standards set forth by state law at the hearing. Challenges issued under O.C.G.A. § 21-2-229 and § 21-2-230 must “specify distinctly the grounds of the challenge,” and the burden of proof rests on the challenger. Both statutes also indicate that hearings should be individualized and that evidence should be considered on a case-by-case basis.⁵ But at the September 6 hearing, the Board flouted the legal standards in a number of ways, most notably by:

- grouping the consideration of a number of challenged voters, thus foreclosing any individualized consideration;
- removing voters based on unverified, third-party information indicating a change of address, which falls far below the requisite burden of proof and violates the NVRA for reasons explained above; and
- sustaining a group of challenges under O.C.G.A. § 21-2-230 without providing *any* justification whatsoever.

Finally, the hearing violated basic notions of fairness and due process. Challenging another citizen’s right to vote is a serious accusation. That’s why O.C.G.A. § 21-2-230, for example, requires boards of registrars sustaining a voter challenge to find probable cause—the same standard applied in the criminal context to place an individual under arrest. Taking someone’s fundamental right away requires more than mere suspicion—it requires individualized, concrete evidence. That basic standard was not met when the Board hastily removed or called into question 301 citizens’ right to vote in disregard of the protections and parameters specified under state and federal law.

³ Shannon McCaffrey, *Forsyth Elections Officials Reject Sweeping Voter Challenge*, Atlanta Journal-Constitution (May 12, 2022), <https://www.ajc.com/politics/forsyth-elections-officials-dismiss-sweeping-voter-challenge/5JHVM6LUQVFPJJOJZ7WJVJGXLI/>.

⁴ Specifically, a voter must either 1) confirm the change of address in writing; or 2) both fail to respond to a prepaid and pre-addressed return card, sent by forwardable mail, and fail to vote or appear to vote during the next two federal election cycles after receiving the notice. See 52 U.S.C. § 20507(d)(1). Moreover, with the exception of a “general program” that removes voters after completion of the steps outlined above or upon a voter’s death, the NVRA prohibits removal unless it is “at the request of the registrant” or “as provided by State law, by reason of criminal conviction or mental incapacity.” See 52 U.S.C. § 20507(a)(3).

⁵ O.C.G.A. § 21-2-229(c) notes that a challenger must meet their burden as it relates to each “person” being challenged. Similarly, O.C.G.A. § 21-2-230(b) refers to the notice requirements of challenges as they relate to each “challenged elector.”

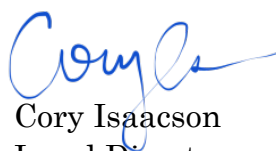
Strict state and federal processes exist to safeguard the accuracy of our voter rolls. Yet the Board chose to defy those processes, rejecting the importance of protecting the fundamental right to vote. A Board member commented at the hearing that an incorrectly removed voter can simply “register again,”⁶ but this severely downplays the high cost of improperly sustaining voter challenges: the potential loss of citizens’ voting rights and the consequential harm to our democracy. In recent years, voter challenges have been used in attempts to disenfranchise hundreds of thousands of eligible Georgia voters based on speculative, and often erroneous, information.⁷ Sustaining those challenges without the requisite legal process, as the Forsyth County Board did, not only violates state and federal law but also leads to the disenfranchisement of rightful voters and the general erosion of our democracy.

For these reasons, we urge you to follow the precedent that this Board set four months ago when it rejected mass challenges issued on the eve of the May primary election. **The Board should immediately reverse its September 6 decision to remove or flag 301 voters, and reject any additional mass challenges that are issued between now and Election Day.** Any other course will leave the Board in blatant violation of state and federal law.

Sincerely,



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Voting Rights Staff Attorney



Cory Isaacson
Legal Director

cc: Ken E. Jarrard, County Attorney
Patrick D. Jaugstetter, County Attorney

⁶ Summary of Regular Monthly Meeting at p. 10, *Forsyth County Meeting Announcements and Participation Details* (last accessed September 15, 2022), available at <https://www.forsythco.com/portals/0/PNM/Meeting/4348/0cdfcc76-4aa7-4862-b2e5-d0f2212ac944.pdf>.

⁷ See, e.g., Mark Niese, *Eligibility of 364,000 Georgia Voters Challenged Before Senate Runoff*, Atlanta Journal-Constitution (December 22, 2020), <https://www.ajc.com/politics/eligibility-of-364000-georgia-voters-challenged-before-senate-runoff/3UIMDOVRFVERXOJ3IBHYWZBWYI/>.